

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

New Landing Utility, Inc.	:	
	:	04-0610
Proposed general increase in water	:	
and sewer rates.	:	

SECOND INTERIM ORDER

By the Commission:

New Landing Utility, Inc. ("NLU" or "Company") provides water and sewer service to residential customers in the New Landing and Lost Nation subdivisions in Ogle County. NLU, a wholly-owned subsidiary of DAME Co., states that it has not had a rate increase in twenty-five years. Gene L. Armstrong, President of NLU, also is the sole owner of DAME Co. stock. The Company filed tariff sheets seeking a rate increase on September 3, 2004. The Illinois Commerce Commission ("Commission") entered an Order suspending the tariff sheets on October 6, 2004, for a hearing on the proposed rates. The matter was re-suspended on January 20, 2005.

On March 30, 2005, Staff of the Commission ("Staff") filed a motion requesting the Illinois Commerce Commission to authorize the filing of a petition in the Illinois Circuit Court to seek the appointment of a receiver and to order the Company to desist from making payments to affiliated interests for which no Commission-approved affiliated interest agreement exists ("Motion"). The Attorney General also filed a motion seeking a petition for receivership. According to Staff, NLU has a pattern of making payments to unapproved affiliated interest transactions while failing to pay operating expenses. Such practice jeopardizes NLU's ability to provide safe, adequate, and reliable water and sewer services to its customers. Staff's Motion also seeks an Interim Order requiring NLU to desist from making payments to affiliated interests for which no Commission approved affiliated interest agreement exists until such time as the Commission has approved an agreement between the Company and the affiliated interest. The Company opposes the Motion, arguing that its payments to the entities in question were not a waste of the assets of NLU.

The Public Utilities Act ("Act") provides that:

No management, construction, engineering, supply, financial or similar contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, ... shall be effective unless it has first been

filed with and consented to by the Commission.... Every contract or arrangement not consented to or excepted by the Commission ... is void.

(220 ILCS 5/7-101(3).) The phrase “affiliated interests” includes:

Every corporation and person owning or holding, directly or indirectly, 10% or more of the voting capital stock of such public utility... (220 ILCS 5/7-101(2)(a).)

Every person who is an elective officer or director of such public utility... (220 ILCS 5/7-101(2)(e).)

[Any person] actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this Section even though no one of them alone is so affiliated. (220 ILCS 5/7-101(2)(h).)

Despite NLU's financial difficulties,¹ the utility has been making payments to affiliated interests, for which no Commission-approved affiliated interest agreement exists. Payments have been made for rent to CAM Properties, an Illinois Partnership, in which Gene L. Armstrong, NLU President, is a majority partner. Payments have also been made for legal services to Gene L. Armstrong and Associates, P.C., in which Gene L. Armstrong, NLU President, is the President and majority shareholder. The Company filed a petition for the approval for affiliated agreements with Gene L. Armstrong & Associates, P.C. and CAM Properties in Docket 04-0666. An evidentiary hearing was held on April 19, 2005, and a final Order is pending.

Payments have also been made for rent and billing services to relatives of Gene L. Armstrong, including his wife, Ann H. Armstrong, and his son, Matthew Armstrong. The Company has never sought Commission approval of any of the affiliated agreements between the Company and Gene L. Armstrong's family. The evidence indicates the presence of affiliated agreements through the blood relationships and concerted actions of Gene and Matthew Armstrong (e.g. monthly payments to handle quarterly billing) and of Gene and Ann Armstrong (e.g. payment for storage of records in their private residence rather than at NLU's office under its lease from CAM Properties). The oddities of these arrangements suggest substantial influence by the family members over the policies and actions of the utility, and therefore the presence of affiliated interests.

¹ The Company acknowledged its financial difficulties in its motion for emergency interim rate relief. In support of the motion for interim rates, NLU alleged that it is unable to keep current on its obligations to pay legal fees; is substantially delinquent in payments to its contractor for maintenance and repair work; and is delinquent in payments to suppliers who provide chemicals and perform testing services. (See *generally* NLU motion (Jan. 11, 2005). The motion was denied as untimely and deficient. See Int. Order at 1 (March 23, 2005).)

Finally, payments have also been made to DAME Co., NLU's parent company. DAME Co. also is wholly-owned by Gene Armstrong. (See Armstrong Dir.) NLU has asserted both that it can not pay its bills (*see supra*) and that NLU owes DAME Co. over \$500,000 (see NLU Resp. to Staff motion at 7). DAME Co. is purportedly operating under the management services agreement that was approved in Docket Nos. 79-0673/0675 (cons.). However, the management services agreement that was approved in those dockets was between NLU and Associated Mortgage Investors ("AMI"), NLU's owner at that time. The management services agreement was transferred to DAME Co. when DAME Co. purchased all of the outstanding stock from AMI in 1984. Such transfer was not approved by the Commission.

The pattern of payments to Company President Gene L. Armstrong's family and businesses is continuing at a time when NLU's contractors are threatening to resign and chemical suppliers are not being paid. The Commission finds that a preliminary showing has been made that these entities are affiliated interests within the meaning of 220 ILCS 5/7-101 *et seq.* The Commission further finds that the public interest requires the safe, adequate, reliable provision of water and sewer service. Inasmuch as daily utility operations appear to be at risk due to the financial condition of NLU, the Commission concludes that it is necessary to direct NLU on an interim basis not to pay any amount to any affiliated interest not already approved by the Commission, including but not limited to Matthew Armstrong, Ann H. Armstrong, CAM Properties, Gene L. Armstrong and Associates, P.C., and DAME Co., unless and until all outstanding balances relating to maintenance or operations have been paid in full, including but not limited to all amounts presently owed to certified water and sewer plant operators, site managers, chemical suppliers, and maintenance contractors. This Second Interim Order shall expire on July 30, 2005, or upon the entry of a final Order in this Docket.

Having considered the record and being fully advised in the premises, the Commission is of the opinion and finds that:

- (1) New Landing Utility, Inc. provides water and sewer service to the public within the State of Illinois, and, as such, is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over NLU and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Second Interim Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law for the purpose of this Second Interim Order;
- (4) for the purpose of this Second Interim Order, CAM Properties, Gene L. Armstrong & Associates, P.C., DAME Co., Ann H. Armstrong and Matthew Armstrong are all affiliated interests of NLU as defined by Section 7-101 *et seq.* of the Public Utilities Act; NLU has failed to receive Commission approval of its agreements with these affiliated interests;

- (5) NLU presently owes substantial outstanding balances relating to the maintenance and operations of the utility plant, including to certified water and sewer plant operators, site managers, chemical suppliers, and maintenance contractors; these unpaid obligations threaten the safe, adequate, reliable provision of water and sewer service to the customers of NLU; and
- (6) it is contrary to the public interest for NLU to make payments to CAM Properties, Gene L. Armstrong & Associates, P.C., DAME Co., Ann H. Armstrong, and Matthew Armstrong until such approval pursuant to Section 7-101 of the Public Utilities Act is received, *and* until the aforementioned outstanding balances have been paid in full.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that, consistent with Findings (4), (5), and (6), New Landing Utility, Inc. shall desist from making payments to CAM Properties, Gene L. Armstrong & Associates, P.C., DAME Co., Ann H. Armstrong, and Matthew Armstrong, until such affiliated interest agreements are approved by the Commission, and until all outstanding balances relating to the maintenance and operations of the utility plant, including to certified water and sewer plant operators, site managers, chemical suppliers, and maintenance contractors, are paid in full.

IT IS FURTHER ORDERED that this Second Interim Order shall expire upon the entry of the final Order setting rates in this docket, or upon July 30, 2005.

IT IS FURTHER ORDERED that this Order is not final and is not subject to the Administrative Review Law.

By Order of the Commission this 10th day of May, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman